

1 Hon. Richard A. Jones
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 HECTOR CASTELLANOS-CERRATO,

14 Defendant.

15 No. CR09-144RAJ

16 ORDER DENYING MOTION
17 FOR REDUCTION OF
18 SENTENCE

19 **I. INTRODUCTION**

20 This matter comes before the court on Defendant Hector Castellanos-Cerrato's
21 *pro se* motion requesting a reduction in his sentence under 18 U.S.C. § 3582(c)(2),
22 based on Amendments 782 and 788 to the United States Sentencing Guidelines
23 ("USSG") (Dkt. #74). Plaintiff United States of America opposes the motion
24 (Dkt. #77). The court has thoroughly considered the parties' briefing, the relevant
25 record, and the applicable law. Being fully advised,¹ the court DENIES Defendant
Castellanos-Cerrato's motion for the reasons stated below.

26 **II. BACKGROUND**

Defendant Hector Castellanos-Cerrato was sentenced by this court on
January 8, 2010 following his plea of guilty to one count of conspiracy to distribute
cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(A), and 846, and one

¹ No party has requested it, and the court finds oral argument to be unnecessary.

1 count of possession of cocaine base with intent to distribute, in violation of 21
2 U.S.C. §§ 841(a)(1) and 841 (b)(1)(A), and 18 U.S.C. § 2. The Indictment charged
3 and Defendant acknowledged in his Plea Agreement that the offenses involved fifty
4 (50) grams or more of a mixture or substance containing a detectable amount of
5 cocaine base. The Statement of Facts and Sentencing Factors stipulations within the
6 Plea Agreement further established the true quantity of cocaine base involved in
7 Defendant's offenses was at least 1.5 kilograms, but less than 4.5 kilograms.

8 At the time Defendant was sentenced, based on this quantity of drugs,
9 Defendant's total offense level was 36, his criminal history category was I, and his
10 applicable sentencing guideline range was 188 to 235 months. However, pursuant to
11 21 U.S.C. § 841(b)(1)(A), Defendant was subject to a mandatory minimum sentence
12 of ten years (120 months). (*See* Plea Agreement, Dkt. #44.) At sentencing, the court
13 varied below the guidelines range and imposed a term of 120 months' imprisonment,
noting that the mandatory minimum was imposed.

14 **III. DISCUSSION**

15 **A. Legal Standard**

16 Amendment 782 to the United States Sentencing Guidelines, which became
17 effective November 1, 2014, lowered the penalties for most drug offenses by
18 reducing most base offense levels contained in the USSG § 2D1.1 Drug Quantity
19 Table by two levels, and making other related adjustments to this Guideline. Along
20 with Amendment 782, the Sentencing Commission adopted Amendment 788, which
21 decreed that Amendment 782 may be applied retroactively to lower the sentences of
22 previously sentenced inmates. At issue in the instant motion is whether this court has
23 authority to reduce Defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

24 In order to qualify for a sentence reduction under 18 U.S.C. § 3582(c)(2), two
25 conditions must be met: (1) the Defendant must have been sentenced to a term of
imprisonment based on a sentencing range that has been lowered by a retroactively
26 applicable Guidelines amendment; and (2) the sentence reduction sought must be

1 consistent with the Sentencing Commission's applicable policy statements. *United*
2 *States v. Waters*, 771 F.3d 679, 680 (9th Cir. 2014) (per curiam). A district court
3 does not have jurisdiction to reduce the Defendant's sentence unless both criteria are
4 met. *See United States v. Wesson*, 583 F.3d 728, 730 (9th Cir. 2009).

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6 **B. Defendant's Motion**

7 Defendant's sentence was a mandatory minimum sentence rather than a
8 sentence based on any section of the Sentencing Guidelines that subsequently has
9 been amended. Sentence reductions are not available to defendants who have been
10 sentenced to the applicable mandatory minimum sentence. As the Ninth Circuit has
11 stated, “[i]t is axiomatic that a statutory minimum sentence is mandatory.” *United*
12 *States v. Sykes*, 658 F.3d 1140, 1146 (9th Cir. 2011). Section 5G1.1(c)(2) of the
13 Guidelines states that a sentence “may be imposed at any point within the applicable
14 guideline range, provided that the sentence is not less than any statutorily required
15 minimum sentence.” USSG §5G1.1(c)(2). Thus, when a defendant is subject to a
16 mandatory minimum sentence, the sentence is never “based on a sentencing range
17 that has subsequently been lowered by the Sentencing Commission.” *United States*
18 *v. Paulk*, 569 F.3d 1094, 1095 (9th Cir. 2009). Therefore, the Defendant does not
19 qualify for a sentence reduction.

20

21 **IV. CONCLUSION**

22 For the above reasons, Defendant Hector Castellanos-Cerrato's *pro se* Motion
23 to Reduce Sentence (Dkt. #74) is DENIED.

24 DATED this 3rd day of December, 2015.

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